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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

MARC OPPERMAN, et al.,  
  
Plaintiffs,  
  
v.  
  
PATH, INC., et al.,  
  
Defendants.

Case No.: 13-cv-00453-JST

CLASS ACTION

**JOINT CASE MANAGEMENT  
STATEMENT**

**THIS DOCUMENT RELATES TO ALL  
CASES:**

*Hernandez v. Path, Inc.*, No. 12-cv-1515-JST  
*Pirozzi v. Apple, Inc.*, No. 12-cv-1529-JST  
*Gutierrez v. Instagram, Inc.*, No. 12-cv-6550-JST

DATE: August 1, 2013  
TIME: 10:00 a.m.  
COURTROOM: 9  
JUDGE: Hon. Jon S. Tigar

1 Pursuant to Federal Rule of Civil Procedure 26(f), Civil Local Rule 16-9, and the Court's  
2 docket entry Order dated July 1, 2013 (*Opperman* Dkt. No. 345), the undersigned counsel for  
3 Plaintiffs and Defendants in the above-captioned Related Actions hereby submit this Joint Case  
4 Management Statement. In addition, pursuant to this Court's instruction during the June 21,  
5 2013 Case Management Conference, the Parties may appear for the August 1, 2013 Case  
6 Management Conference and all future Case Management Conferences telephonically without  
7 additional leave of Court.

8 **I. BRIEFING SCHEDULE AND PAGE LIMITS**

9 **A. The Parties' Position on Briefing Schedule for Responding to**  
10 **Plaintiffs' Consolidated Amended Complaint**

11 The Parties propose the following alteration to Civil Local Rule 7-3: (a) the time to  
12 respond to Plaintiffs' consolidated amended complaint will be extended to 45 days from filing  
13 and service; (b) the time to oppose any motion to dismiss the consolidated amended complaint  
14 will be extended to 45 days from filing and service; and (c) the time to file a reply to any motion  
15 to dismiss the consolidated amended complaint will be extended to 30 days from filing and  
16 service. Because Defendants have not provided Plaintiffs with proposed page limits for their  
17 respective motions, Plaintiffs cannot provide the Court with proposed page limits, but request  
18 any page limits be commensurate with Defendants'.

19 **B. Defendants' Position on Revised Page Limits for Responding to**  
20 **Plaintiffs' Consolidated Amended Complaint**

21 Without knowing what claims Plaintiffs intend to assert in their Consolidated Amended  
22 Complaint or the identities of the Defendants against whom those claims are asserted,  
23 Defendants are unable to estimate page limits for consolidated briefing on motions to  
24 dismiss. Upon being served with the Consolidated Amended Complaint, Defendants will meet  
25 and confer with Plaintiffs to attempt to agree on proposed page limitations with the objective of  
26 submitting a stipulation to the Court. If the parties are unable to reach agreement on page limits  
27 within seven days of the filing of the Consolidated Amended Complaint, Defendants will file a  
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1 miscellaneous administrative request to set briefing page limits. Defendants anticipate the  
2 following defendants (the “Application Developer Defendants”) will file a consolidated brief in  
3 support of their motions to dismiss: Gowalla, Inc., ZeptoLab UK Limited, Path, Inc., Twitter,  
4 Inc., Instagram, Inc., Kik Interactive, Inc., Foursquare Labs, Inc., Electronic Arts, Inc., Chillingo,  
5 Inc., Rovio Entertainment Ltd., Foodspotting, and Yelp!. Several Defendants, including  
6 Electronic Arts, Chillingo, ZeptoLab, Rovio, and Gowalla, also anticipate filing a joint  
7 supplemental brief that seeks dismissal on the ground that plaintiffs consented to any alleged  
8 accessing of their address book data. To the extent Apple remains a defendant in the case, it  
9 anticipates filing a separate brief to address allegations that are unique to it. To the extent the  
10 Consolidated Amended Complaint continues to assert successor-liability and/or aiding-and-  
11 abetting theories of liability against Facebook, Facebook will submit a separate brief addressing  
12 those allegations. In addition, Kik Interactive, Inc. anticipates filing a motion to dismiss for lack  
13 of personal jurisdiction.

## 14 **II. LEADERSHIP PROPOSALS**

### 15 **A. Plaintiffs’ Position**

16 Counsel for Plaintiffs in each of the above-captioned Related Actions have agreed to  
17 coordinate their efforts under a unified leadership structure in order to efficiently prosecute the  
18 Related Actions. Plaintiffs submitted a proposed stipulation to the Court on July 25, 2013  
19 (*Opperman* Dkt. No. 352) with said proposed leadership structure.

### 20 **B. Defendants’ Positions**

21 The Application Developer Defendants (all of whom are parties to the *Opperman* matter)  
22 do not believe there is need for the appointment of lead defense counsel. Defense counsel have  
23 been working together effectively for over sixteen months without a designated leader. For each  
24 substantive motion, one firm takes the lead on briefing, and one attorney argues the motion  
25 without repetitive argument from others. For any given motion, however, the identity of that  
26 lead firm changes, as Defendants attempt to share fairly the burden of defense, both financial and  
27 logistical.

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1 Unlike Plaintiffs' counsel, who jointly seek to represent the interests of the entire class,  
2 each defense firm represents only its own client or clients, and thus there is no need for a  
3 leadership structure to make decisions or "break ties" as to each client's interests.

4 Moreover, the logistical burden of coordinating over a dozen firms and clients is  
5 significant, and it would be unfair to place that burden and cost on a single firm throughout the  
6 litigation. We therefore propose that, until and unless the Court perceives a problem with the  
7 existing structure, there is no need to designate a "lead" defense firm.

8 To the extent the Court is concerned that communicating with multiple defense counsel  
9 would burden Court personnel, each of the undersigned defense counsel undertakes to serve as a  
10 "point person" whenever contacted by the Court.

11 Finally, Apple does not support a formal defense structure as to the claims against Apple,  
12 which are distinct from the claims against the Application Developer Defendants.

### 13 **III. DISCOVERY ISSUES**

#### 14 **A. Plaintiffs' Position**

15 Plaintiffs in the *Hernandez* action previously entered into a stipulated protective order  
16 with Defendant Path, Inc. (*Hernandez* Dkt. No. 40). The Court approved the stipulated  
17 protective order on November 27, 2012. Plaintiffs in all Related Actions are agreeable to the  
18 terms of the *Hernandez* stipulated protective order and have notified all Defendants of their  
19 willingness to stipulate to the same. The parties have not yet come to an agreement on Plaintiffs'  
20 proposal.

21 Plaintiffs have begun discussions regarding a proposed ESI protocol for all Related  
22 Actions and will continue to work on finding consensus on the same.

#### 23 **B. Opperman Plaintiffs Additional Position—Necessary Discovery If** 24 **Defendant(s) Raise Consent Defenses Via Preliminary Motions**

25 Should any Defendant seek dismissal on the ground that Plaintiffs consented to any  
26 manipulation of their mobile device address book, Plaintiffs believe that commensurate  
27 discovery will be appropriate under the Court's Order dated July 1, 2013, and that Plaintiffs  
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1 further will be entitled to assert cross-motions for denial of that affirmative defense as a matter of  
2 law.

3 **C. Defendants' Positions**

4 Defendants are prepared to meet and confer with Plaintiffs on a suitable protective order  
5 and a proposed ESI protocol but believe such discussions should take place (if at all) only after  
6 the Court has ruled on Defendants' motions to dismiss Plaintiffs' forthcoming Consolidated  
7 Amended Complaint, which the Court ordered Plaintiffs to file within 10 days of the Court's  
8 ruling on Apple's Motion to Dismiss with prejudice the Second Amended Complaint in the  
9 *Pirozzi* action. Once those discussions take place, Defendants will meet and confer with  
10 Plaintiffs to modify the *Hernandez* protective order (if appropriate) to, inter alia, add a  
11 designation for "Plaintiff counsels' eyes only" that would restrict commercially sensitive  
12 information produced by one defendant from being shared with counsel for other defendants.  
13 Defendants also believe a Rule 26(f) conference is premature until after the Court has ruled on  
14 Defendants' anticipated motions to dismiss.

15 **IV. CONSOLIDATED AMENDED COMPLAINT**

16 Pursuant to this Court's July 1, 2013 Order (*Opperman* Dkt. No. 345), Plaintiffs will be  
17 prepared to file a Consolidated Amended Complaint within ten (10) days following the Court's  
18 issuance of a decision on Apple, Inc.'s motion to dismiss the *Pirozzi* action.

19 DATED: July 25, 2013

Respectfully submitted,

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